

### REMARKS

In the present Office Action, dated May 4, 2005, claims 1-6, 8, and 9 are pending. Claims 1-6, 8, and 9 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,539,395 B1 (Gjerdingen et al.) in view of U.S. Pat. No. 6,721,741 (Eyal et al.).

In the previous Office Action, dated January 4, 2005, the Examiner allowed claim 7, and in response the Applicants canceled claim 7 and incorporated its limitations into claim 1. Now, in the present Office Action, the Examiner has rejected these claim 7 limitations that were incorporated into claim 1. In response, Applicants cancel those limitations from claim 1 and place them back into a new dependent claim 87, depending from claim 1.

At the outset, the Applicants thank the examiner for the thorough examination of the cited references and commentary regarding the presently pending claims. However, the Applicants submit that the pending claims are patentable over the cited art in view of the following remarks.

#### ***Rejection of claims 1-6, 8 and 9 under § 103(a)***

As mentioned above, claims 1-6, 8, and 9 have been rejected under § 103 as unpatentable over Gjerdingen et al. in view of Eyal et al. Claim 1 is the only independent claim, and it reads:

A method for matching a user's musical preferences, comprising:  
    providing a specific choice of user preferences in song content to a content provider;  
    mapping the specific choice of user preferences in a song analysis and matching system *using a set of fundamental musical properties that captures the user's preferences in song content*;  
    scanning a database using the song analysis and matching system to find other songs that have a similar mapping of musical properties; and  
    playing automatically to the user other songs that have a similar mapping of musical properties.

(emphasis added). As emphasized above, the user's preferences are captured *in song content*. Applicants submit that the limitation of "using a set of fundamental musical properties that captures the user's preference *in song content*" (emphasis added) cannot be found in any of the cited art, since the cited art 'captures the user's preferences *using user input*.' In other words, whereas in the claimed invention the user's preferences are in song

content that is leveraged to play “other songs” (claim 1) (*see also* Application, ¶ 37), in the cited art the user’s preferences are input by the user without such leveraging.

With respect to Gjerdingen, first of all, it doesn’t even apply to the same technical field as the claimed invention. Gjerdingen is concerned with a method for *creating* a database for comparing music and not with the *transmission* of new, high affinity media. To *create* a music database is one thing, to *transmit* music by *using* a database is another (“scanning a[n] [existing] database using the song analysis and matching system to find other songs that have a similar mapping of musical properties”).

Second, and more importantly, Gjerdingen does not teach the aforementioned limitation because it captures a user’s preferences once the database is created by having the user *input* his preferences instead of leveraging song content to play other songs. Fig. 10A illustrates a User Interface (UI), where “[a] listener enters the request based upon the listener’s preferences” (col. 28, ll. 3-7). However, this cannot be interpreted as teaching “using a set of fundamental musical properties that captures the user’s preference *in song content*” (claim 1).

Likewise, Eyal et al. does not disclose this claimed limitation. For example, Eyal et al., at col. 36, ll. 32-26, discloses a user-interface for prompt user input, such as for one or more search criteria – a la Gjerdingen. Thus, Eyal et al. also fails to this close the claimed limitation and, furthermore, it was not cited in the first place as addressing this limitation.

Inasmuch as claims 2-6, 8-9, and 87 depend directly from claim 1, Applicants submit that they are allowable for at least the same reasons. Withdrawal of the rejection and allowability of the pending claims is thus earnestly solicited.

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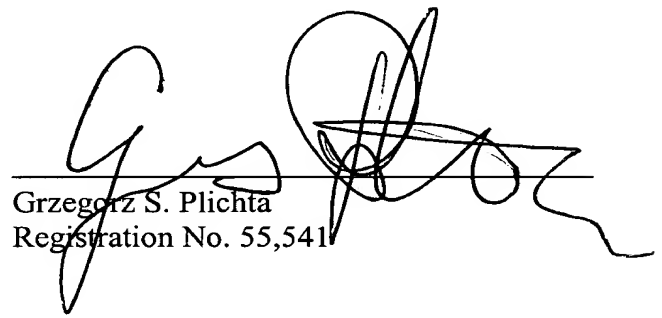
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### **CONCLUSION**

Applicants believe that the present Amendment is responsive to each of the points raised by the Examiner in the Office Action, and submit that claims 1-6, 8-9, and 87 of the Application are in condition for allowance. Favorable consideration and passage to issue of the application at the Examiner's earliest convenience is earnestly solicited.

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